

AUTHORITY TO PURCHASE LAND.

The purchase of land for the United States, "except under a law authorizing such purchase," being prohibited by section 3736, Revised Statutes, the purchase of land for a fishery station can not be implied from the provisions of the act of May 12, 1900, authorizing the establishment of such a station and appropriating money "for the necessary surveys, erection of buildings and other structures," etc.

(Comptroller Tracewell to the Disbursing Agent of the Fish Commission, March 13, 1901.)

I have received your letter of the 21st ultimo in regard to an account presented to you for payment in connection with the purchase of a certain tract of land in the State of North Carolina from the appropriation made in the act of May 12, 1900 (31 Stat., 177), providing:

"That the Commissioner of Fish and Fisheries be, and he is hereby, authorized, empowered, and directed to establish a station for the investigation of problems connected with the marine fishery interests of the Middle and South Atlantic States at some point in North Carolina.

"That for the necessary surveys, erection of buildings and other structures, and for the proper equipment of said station, the sum of twelve thousand five hundred dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated."

Your inquiry had reference to the sufficiency of a general statute of the State of North Carolina authorizing the purchase by the United States of land for public objects, and was suggested by the provisions of section 355 of the Revised Statutes.

On the 2d instant I wrote to you asking to be informed, in view of the provisions of section 3736 of the Revised Statutes, of the authority of law for the purchase of any land on account of the United States from the above appropriation.

That section is as follows:

"No land shall be purchased on account of the United States except under a law authorizing such purchase."

In a letter of the 6th instant the Commissioner of Fish and Fisheries acknowledged the receipt of my letter to you, and replied as follows:

"The act of Congress in question authorizes and directs the Commissioner of Fish and Fisheries to establish a station for

the investigation of fishery problems at some point in North Carolina, and provides \$12,500 for the necessary surveys, erection of buildings and other structures, and for the proper equipment of said station. While the act does not specifically authorize the purchase of land it directs that other steps be taken which would be impossible without the possession of the land, and accordingly it would seem obvious that the purchase of sufficient land for the station was intended by this act."

While it is true that when an appropriation is made for a specific object, it by implication confers authority to incur expenses which are necessary to its execution, or appropriate or incidental thereto, this rule can not be invoked in the face of an express prohibition of law, especially if a sufficient meaning can be given to the appropriation without disregarding the prohibition contained in some other statute. The act of May 12, 1900, *supra*, certainly does not in terms authorize the purchase of land; whether it by necessary implication authorizes such purchase is the question to be decided. Repeals by implication are not favored, and if a sufficient and reasonable meaning can be given to both statutes this must be done.

If this act authorizing the establishment of a station stood alone, or if the matter of the establishment of fish-culture stations was a new and unconsidered one, there would be more force in the contention of the Commissioner. But the country is dotted with stations established by virtue of acts of Congress, and this act must be read in the light of other acts on the same general subject. If Congress, in authorizing from year to year the establishment of these stations, had omitted all reference to the acquisition of land therefor, it might reasonably be inferred that this was done with a full knowledge of the prohibition found in section 3736, Revised Statutes, and of the fact that the appropriations were being construed to authorize the purchase of land. A careful examination of the many acts relating to the establishment of fish-culture stations negatives this idea and convinces me that the appropriation under consideration does not make any exception to the general provisions of the law.

The act of March 2, 1889 (25 Stat., 954), provides:

"For the purchase of ground, construction of buildings and ponds, and purchase of equipment of fish hatchery and rearing stations near Craig's Brook, Reed's Pond, and Branch Pond, Maine, eleven thousand dollars."

The act of August 5, 1892 (27 Stat., 361), provides:

"For the establishment of fish-cultural stations in the States of Montana and Texas, at points to be selected by the United States Commissioner of Fish and Fisheries, including the purchase of the necessary lands and water rights, and the erection of buildings, and for such other constructions, equipment, and work necessary to place the stations on an efficient basis, * * * twenty thousand dollars."

Acts similar in character, and all making specific provision for the purchase of land have been passed, providing for the establishment of stations in Michigan (26 Stat., 384), Vermont (*id.*, 964), New York (*id.*), Iowa (28 Stat., 386, 638), Tennessee (*id.*; 30 Stat., 612), New Hampshire (*id.*, 25), California (*id.*, 236), and North Carolina (*id.*, 662). Donations of land before the establishment of a station were required in the cases of Georgia and Washington (30 Stat., 612), and in several cases the purchase of land, already leased for station purposes, was authorized (26 *id.*, 384, 965; 29 *id.*, 279).

In a few cases Congress appears to have provided for the establishment of a station without providing for the purchase of a site, but in view of almost uniform legislation in the other direction, and particularly in view of the authorization found in several acts for the purchase of lands for stations already established upon leased land, these cases can not be held to make such an exception to the general trend of legislation as to give them controlling weight when contrasted with the almost uniform practice in the matter.

In construing the seventh section of the act of May 1, 1820 (now section 3736, Revised Statutes), Attorney-General Speed (11 Op., At. Gen., 201), held that an act of Congress appropriating a sum of money "for permanent defenses at Narragansett Bay" did not authorize the purchase, on account of the United States, of a tract of land as a site for a proposed fort at the place mentioned in the statute. I quote from that opinion as follows:

"The doubt upon the point has arisen under the provision of the seventh section of the act of May 1, 1820 (5 Stat., 568), which declares, 'that no land shall be purchased on account of the United States, except under a law authorizing such purchase.' This is a general and permanent enactment, and the doubt which has been suggested must be held to be well founded, and incapable of being resolved in favor of the

right of the Department to purchase the land in question, unless the words of the act of 1863, which have been quoted, are legally capable of being construed as conferring authority on the Department to make the proposed purchase. Certainly the words of the act do not expressly confer that authority. The power to purchase land, from the authority conferred to construct 'permanent defenses,' must be derived, if derived at all, by implication from those words. * * *

"It is clear, then, that the power to construct such defenses as are thus described, and to purchase materials therefor, may be executed entirely well without the exercise of a power to purchase land, although it will be readily conceded that the United States, in most cases, before expending money for the purchase of materials necessary in the construction of defenses of this description, and for the erection of such works, as a matter of proper precaution and prudence, should become the owner of the sites on which they are to be reared. The power in question being derivable, therefore, only by implication from the authority conferred by the statute, the question is, whether we are at liberty, in view of the general and permanent prohibition contained in the statute of 1820, to determine that the power conferred on the executive department by the act of 1863 embraces a power so clearly merely incidental to the one conferred.

"I am of the opinion that we are not, and that the general effect of the act of 1820, is to render the exercise by an executive department of a power to purchase land on account of the United States illegal, unless the intention of Congress that such a power should be exercised has been so clearly expressed in the law which is invoked as containing the authority, that the power may be said to be an express one under the words of that law. * * *

"There never was a time in the history of this Government when the purchase of land on account of the United States without authority of law was a legal act on the part of the Executive. What effect, then, can the act of 1820 have, as a substantive expression of the will of Congress, unless that of prohibiting the purchase of real estate on account of the United States under merely implied authority? I can conceive of none."

See also 12 Fed. Rep., 415.

Concurring in the opinion of the Attorney-General, I am unable to see in the act of May 12, 1900, *supra*, any authority for the Commissioner of Fish and Fisheries to purchase any land on account of the United States, and hence it is not necessary to consider the question asked by you in your letter of February 21, 1900, in regard to the sufficiency of the North Carolina statute.